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Fair Tax

TAX STRATEGY REPORTING AMONG THE FTSE 50 –

Slow to emerge, poorly executed, but some examples of excellence

Supported by

Local Authority Pension Fund Forum

We have seen through ongoing criticism of Apple, Google and Starbucks that poor tax practices can have a significant reputational impact on companies.

As an organisation representing 73 local authority pension funds interested in responsible investment, LAPFF therefore has a keen interest in ensuring that companies espouse responsible tax practices. Helpful disclosures on tax practices are a good start.

In 2015, LAPFF consulted with the Fair Tax Mark's Richard Murphy to develop a questionnaire on tax reporting. The questionnaire was distributed to the FTSE 100. The results of this survey suggested that most FTSE 100 companies needed to make significant progress to achieve a standard of reporting on tax that would allow investors to properly assess corporate tax practices.

Mr Murphy further assisted LAPFF in conducting follow up interviews to determine what obstacles might exist to prevent improved reporting on tax. It transpired that a number of companies were taking steps to improve their tax practices but that, for a variety of reasons, they did not feel comfortable reporting this information publicly.

Many of those reasons given for not reporting fully on tax have been superseded by law. Since the initial questionnaire was issued, there have been a number of developments – such as Schedule 19 of the Finance Act 2016 described here – to regulate tax disclosures.

In keeping with these developments, LAPFF is working with Richard Murphy and the Fair Tax Mark to develop a more industry-oriented, policy-focused approach to tax disclosure. This approach will be informed by cutting-edge research such as this report, which LAPFF is proud to sponsor.

I am pleased to see that some companies are taking improved tax reporting to heart. While Vodafone was vilified for its tax reporting a few years ago – predominantly because the Company did not fully report on a country-by-country basis – it is now emerging as a good example.

While this report suggests there is a long way to go before companies overall report appropriately on tax, positive company responses such as those by Vodafone, SSE, Prudential and Legal & General are encouraging. I am confident that in partnership with the Fair Tax Mark, LAPFF can continue to facilitate such improvements at other companies.

Councillor Kieran Quinn
Local Authority Pension Fund Forum

For more information about LAPFF, visit our website at http://www.lapfforum.org/

For more information about LAPFF's engagement programme, please contact Lara Blecher.

About this report

Poll after poll shows that tax avoidance is the number one concern of the UK public when it comes to corporate conduct. Without doubt, how a company deals with its tax affairs is key to its reputation. This creates enormous corporate risks, but opportunities also.

Across the globe, a wide range of stakeholders are calling for radical improvements in tax transparency by big business. It is widely understood that tax helps to fund vital public goods and services and when paid fairly, it ensures a level playing field for businesses large and small. In the UK, in a significant development, Schedule 19 of Finance Act 2016 requires thousands of businesses to publish their UK Tax Strategy annually (before the end of their first financial year commencing after 15th September 2016). In a world where trust is at a premium (especially when it comes to big business paying an appropriate amount of tax), companies need to report on their tax practices openly and honestly. This will help stakeholders to understand the contribution businesses are making (or failing to make) and why.

This report analyses how the top 50 companies of the FTSE 100 (ranked by market capitalisation; hereafter 'FTSE 50') have responded to the new legislation, as at 30th June 2017 (the cut-off date for the purposes of our study). We have ranked companies on a scale of zero to five. As well as rating basic legislative compliance, we assess the degree to which these FTSE 50 companies provide clarity on a number of other best practice indicators in tax reporting, including their approach to (and use of) tax havens, the provision of public country-by-country reporting of economic activity and the degree to which the Tax Strategy covers global operations.

Summary of key findings

Schedule 19 of Finance Act 2016 introduced the requirement for designated large businesses operating in the UK to publish a Tax Strategy, and stipulates the areas that must be covered, with HMRC providing more detailed guidance on the required content of disclosures. **Our findings show disappointing performance: the majority of FTSE 50 companies are not, as yet, following this guidance in a prompt and rigorous manner.**

Only 17 (34%) of FTSE 50 companies had published their Tax Strategy online by 30th June 2017. Two-thirds had (at that point) failed to respond to the Finance Act 2016's stipulations, and scored zero. **There is an apparent reluctance to embrace the spirit of the legislation and respond quickly to the opportunity to provide much needed clarity in an area of significant concern to a variety of stakeholders.**

Moreover, where Tax Strategies have been produced, they are often poorly constructed and fail to meet even the basic legislative requirements. In just two cases was compliance good; and in just four cases did business go above and beyond what the law might expect with their tax transparency (i.e., they explained their approach to, and use of, tax havens and they publicly disaggregated economic activity on a country-by-country basis). Disclosure of the level of tax risk that the business is prepared to accept, as required by the legislation, was frequently absent from Tax Strategies, as was clarity on tax planning motives. Nearly every business failed to comment on how they work with HMRC on interpreting the law. However, **a small group are not only implementing the legislation promptly, but voluntarily providing much needed additional disclosures.**

The 17 published Tax Strategies were rated as follows:

- Seven (14%) demonstrated **"poor compliance"** and achieved a score of 1,
- Four (8%) demonstrated **"basic compliance"** and achieved a score of 2,
- Two (4%) demonstrated **"good compliance"** and achieved a score of 3,
- Zero (0%) went **"beyond compliance in the UK"** and achieved a score of 4, and
- Four (8%) went **"beyond compliance globally"** and achieved a score of 5.

The following companies went beyond legislative compliance and are the benchmark for others on matters of tax transparency:

- Legal & General Group Plc
- Prudential Plc
- SSE Plc
- Vodafone Group Plc

The Tax Strategies of these companies went beyond legislative requirements and HMRC guidance, and included voluntarily disclosure of the group's global Tax Strategy (only UK Tax Strategy is mandatory under the Finance Act 2016); their approach to tax havens; and also disclosed country-by-country analysis of key elements of financial data. A full list of subsidiaries, with their location, was also provided. These businesses have grasped the importance of tax transparency and are making serious attempts to be open and honest and to build trust with stakeholders. Explaining if and why a business will conduct activity in tax havens is now a basic requirement to build trust and credibility in this area. Likewise, a shift toward public country-by-country reporting of profits and economic activity is needed if a business is to effectively communicate how and where it creates economic value.

Of course, tax transparency does not necessarily equate to the absence of overly aggressive tax planning or tax avoidance. SSE has secured a Fair Tax Mark and this provides a level of assurance; however, this cannot be assumed as a given (one way or the other) with the other companies.

About the Fair Tax Mark

The Fair Tax Mark certification scheme was launched in February 2014 and seeks to encourage and recognise organisations that pay the right amount of corporation tax at the right time and in the right place. Tax contributions are a key part of the wider social and economic contribution made by business, helping the communities in which they operate to deliver valuable public services and build the infrastructure that paves the way for growth. Certified businesses include FTSE-listed plcs, co-operatives, social enterprises and large private business. We operate as a not-for-profit community benefit society and believe that companies paying tax responsibly should be celebrated, and any race to the bottom resisted.

Further information at:

- Website: https://fairtaxmark.net
- Phone: 0161 769 0427
- Email: info@fairtaxmark.net

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Image courtesy of LiveSurface Context

BACKGROUND

The UK's new requirement for published Tax Strategies

Schedule 19 of Finance Act 2016 introduced the requirement for designated large businesses to publish a Tax Strategy in relation to UK taxation.

The legislation applies to UK companies, partnerships, groups and sub-groups if in the previous tax year:

- turnover exceeded £200 million, or
- balance sheet exceeded £2 billion.

The aim of the legislation is to increase transparency around taxation by making it mandatory for businesses to explain their tax arrangements in relation to four prescribed areas:

- Approach to **risk management** and **governance** arrangements in relation to UK taxation;
- Attitude towards **tax planning** (so far as affecting UK taxation);
- **Level of risk** in relation to UK taxation that the business is prepared to accept; and
- Approach towards **dealing with H M Revenue & Customs** (HMRC).

Although there is no requirement for the document to be titled 'Tax Strategy', the publication does not constitute a Tax Strategy for the purposes of the legislation unless the business makes it clear that it regards its publication as complying with the duty under paragraph 16(2) or 22(2) as relevant, in the current financial year.

A Tax Strategy should, if it is to meet HMRC requirements, be published on the internet free of charge, as either a standalone document or as a self-contained part of a wider document, before the end of the company's first financial year commencing after 15th September 2016. Thereafter the Tax Strategy must be published annually, within 15 months of the previous one. HMRC may impose penalties for non-compliance.

In September 2016, an amendment to the Finance Bill was agreed by Parliament, giving the Treasury the option (yet to be enacted) to require public country-by-country reporting as part of a group's published Tax Strategy. We have therefore included an assessment of country-by-country reporting in our rating of the FTSE 50 companies.

Companies in the study and scoring methodology

This study analyses how the top 50 companies of the FTSE 100 (ranked by market capitalisation) have applied these new reporting requirements, in addition to other general best practice in corporation tax reporting.

Many of these companies already have their own published Tax Policy, Tax Principles and/or Tax Code of Conduct which could be modified to meet the disclosure requirements of Finance Act 2016. However, at 30th June 2017 (the cut-off date for our study), only 17 (34%) of FTSE 50 businesses had published a Tax Strategy that self-evidently sought to realise compliance with the Finance Act 2016.

Published Tax Strategies were analysed and rated according to the quality of the disclosures, based upon a combination of legislative stipulation, HMRC guidance and the Fair Tax Mark's requirements for transparency on the use of tax havens, listing of subsidiaries and country-by-country reporting of key economic data.

Each FTSE 50 company was awarded a score of between 0 and 5 based on the methodology we note below. For the avoidance of doubt, a score (e.g. 5) can only be achieved if all requirements of the preceding scores have been met (e.g. 1 to 4).

- *Score 0: Tax Strategy absent*
  No Finance Act 2016 compliant Tax Strategy was published online by the cut-off date for our study (30th June 2017).
- *Score 1: Poor compliance - Tax Strategy does not meet basic legislative requirements*
  The published Tax Strategy does not meet basic legislative requirements because it missed out **one or more** of the four prescribed requirements completely, or covered all four in **insufficient detail**.
- *Score 2: Basic compliance*
  The published Tax Strategy meets minimum legislative requirements by covering **all four** prescribed areas and is essentially the bare minimum of required disclosure.
- *Score 3: Good compliance*
  The published Tax Strategy goes beyond minimum legislative requirements by discharging all the above, plus most or all elements from HMRC's additional guidance.
- *Score 4: Beyond compliance in the UK*
  The published Tax Strategy meets all the above requirements; and, in line with emerging best practice, the business publicly discloses the following (but not necessarily within the Tax Strategy document):
  - The group's approach to and use of tax havens
  - Country-by-country analysis of key elements of financial data (as per the yet to be enacted powers set out under paragraph 17(6) of Schedule 19 of Finance Act 2016);
  - A full list of subsidiaries, with their location.
- *Score 5: Beyond compliance globally*
  The published Tax Strategy and additional disclosures meet all the above. The top score of 5 is only awarded where the Tax Strategy applies to all jurisdictions applicable to the business rather than just UK taxation, as required by Finance Act 2016.

FINDINGS AND ANALYSIS

Risk management and governance in relation to taxation

The Finance Act 2016 requires businesses to disclose their approach to risk management and governance arrangements in relation to UK taxation. To meet this requirement, HMRC guidance sets out the following areas of disclosure:

- set out the tax risks linked to the business's size, complexity and changes;
- how tax risks are managed;
- a description of key roles and responsibilities;
- information on the systems and controls in place to manage tax risks; and
- the levels of oversight of the Board and its involvement.

Finding: descriptions of key roles and responsibilities were good, but companies fell short of explaining systems and controls for managing tax risk

Of those reporting, most businesses performed well on the requirement to report on management functions. The description of key roles and responsibilities were usually well covered, typically with day-to-day responsibilities delegated to a team of in-house tax professionals and regular reporting to the Chief Financial Officer, with oversight from the Board.

The analysis of tax risks varied (if they were covered within the Tax Strategy at all). One business considered, in turn, examples of specific tax risks (for example, the collection and payment of excise duty and transfer pricing) linked to each of the business' size, complexity, and extent of change. Another business discussed the types of tax risks (for example, compliance, transactional and reputation risks) it was exposed to as a consequence of the business' size, complexity and extent of change collectively.

How tax risks are managed and the systems and controls in place to manage tax risk was typically less detailed, with many publications simply addressing these questions by explaining key roles and responsibilities. It would be useful to see more specific explanations in relation to how tax risks are managed; for example, the carrying out of regular benchmarking studies to identify arms length pricing to manage transfer pricing risk, as quoted by one company.

Attitude towards tax planning

The Finance Act 2016 requires businesses to disclose their attitude to tax planning (so far as affecting UK taxation). To meet this requirement, HMRC guidance sets out the following areas of disclosure:

- details of any business code of conduct;
- explain why external advice sought;
- outline tax planning motives; and
- the importance of each to the Tax Strategy.

Finding: most businesses performed poorly on describing their attitude to tax planning, demonstrating a narrow understanding of purpose as 'shareholder maximisation'.

Most businesses performed poorly on this requirement, with elements of HMRC guidance only touched upon briefly. Statements outlining tax planning motives commonly discussed the generic need to maximise returns for shareholders, although this is not what UK company law actually requires that management do (as set out in Companies Act 2006). Many Tax Strategies also state that the organisation would claim all available reliefs, but would not engage in artificial transactions with no commercial substance. Examples of more informative statements on tax planning motives include one which explained that where the business could choose how to structure transactions they would do so in a tax-efficient manner after concluding that it is a responsible choice. Another business explained that given the UK's relatively low corporation tax rate, they placed very little focus on tax planning to reduce UK taxation.

Reasons why a business might seek external advice typically focused upon understanding new legislation or on seeking insights into industry practice and/or specialist areas with which the in-house tax team may be unfamiliar.

The business' own code of conduct was commonly referred to within Tax Strategy documents. Unfortunately, no Tax Strategy provided full details of this business code of conduct, although a hyperlink to the code was often provided.

The importance of each of the above elements to the Tax Strategy was particularly poorly addressed. Where addressed, this was only to the extent that the Tax Strategy is shaped by the principles within the organisation's own code of conduct. Much better disclosure of the relative importance of each of the above elements to the Tax Strategy would help users understand the main drivers behind the organisation's Tax Strategy.

The level of tax risk that the business is prepared to accept

The Finance Act 2016 requires businesses to disclose the level of risk in relation to UK taxation that the business is prepared to accept. To meet this requirement, HMRC guidance sets out the following areas of disclosure:

- state if the organisation's internal governance has rigid levels of acceptable tax risk; and
- if so, explain how the above is influenced by stakeholders.

Finding: most businesses did not disclose the level of tax risk they are prepared to accept and where companies did describe it, they omitted vital narrative explanation.

A large number of Tax Strategies did not meet this requirement as they do not disclose the level of tax risk that the business is prepared to accept. Instead, a more common approach to addressing this requirement is to indicate that tax risk is subject to the same treatment as any other business risk. This did not answer the specific requirement as the business should indicate the 'level' of tax risk acceptable to it.

A small minority of companies did touch on this briefly; for example, one company stated that their appetite for tax risk is 'low'. This is a good start, but a narrative explanation on what this means would help reduce subjectivity. Another organisation indicated that their tax risk should be sustainable and defendable should the matter become public. This is a helpful narrative explanation, although it could be strengthened by combining this with a clear indicator of the level of tax risk (e.g. low).

Of the companies who did address this legislative requirement, none identified their level of acceptable tax risk as being rigid: they were usually silent on this matter. However, one organisation did clarify this by saying that the level of acceptable tax risk is assessed on a case-by-case basis (i.e. it is not rigid).

Again, only a small minority touched upon how the business' level of acceptable tax risk is influenced by stakeholders. The ones who attempted this referred to reputation risks in general, which implies certain stakeholder groups. A better answer might be to set out specifically which stakeholder groups (e.g. customers) influence the level of acceptable tax risks and how (e.g. customers care about whether the business pays its fair share of tax, resulting in a low level of acceptable tax risk).

The approach towards dealing with HMRC

The Finance Act 2016 requires businesses to disclose their approach towards dealing with HMRC. To meet this requirement, HMRC guidance sets out the following areas of disclosure:

- how the business meets the requirement to work with HMRC,
- how the business works with HMRC on current, future and past tax risks,
- how the business works with HMRC on tax events, and
- how the business works with HMRC on interpreting the law.

Finding: most businesses addresses this requirement with varying quality, though there was significantly poor explanation of how companies sought to work with HMRC.

Most businesses addressed this legislative requirement, albeit to varying extents. The basic requirement to disclose the business' approach to dealing with HMRC is typically responded to by explaining that the business works transparently with HMRC, seeking to build a strong relationship.

If addressed at all, current, future and past tax risks typically referred to open enquiries (past tax risks), seeking to solve issues with HMRC on a real-time basis (current tax risks) and how the business works with HMRC to agree the tax treatment of a proposed transaction (future tax risks). One company specifically referred to their use of Advanced Pricing Agreements, whilst another disclosed that they may in some circumstances use litigation where no agreement can be made.

A number of businesses discussed their contributions (whether directly or indirectly) to commentaries regarding new tax legislation, in order to address how the business works with HMRC on tax events. HMRC guidance on this part remains very open and businesses can cover a wide range of tax events here and we would encourage them to do so.

HMRC's guidance on disclosing how the business works with HMRC on interpreting the law was poorly addressed. Almost every business within our study did not comment on this (favouring use of external advisers to help them interpret new legislation) or simply stated that the business works constructively with HMRC on interpreting legislation, without clarifying 'how' they do so.

Schedule 19 of Finance Act 2016: statement of compliance

Paragraphs 17(4) and 23(4) of Schedule 19 of Finance Act 2016 state that the publication of information as the group or company tax strategy does not constitute publication of the strategy for the purposes of paragraph 16(2) or 22(2) unless the UK company makes clear (in a way that will be readily apparent to anyone accessing the information online) that the company regards its publication as **complying with the duty under paragraph 16(2) or 22(2)** (as applicable) in the **current financial year**. This legislative requirement is frequently overlooked. In fact, of the 17 published tax strategies included within our study, only 11 of them have issued a statement of compliance in accordance with paragraph 17(4) or 23(4) as relevant, even though the Tax Strategy has clearly been published as a result of Schedule 19 of Finance Act 2016.

This is a straightforward requirement to fulfil and we would recommend companies ensure such statement of compliance is included within their Tax Strategy. Where Tax Strategies are known by other titles such as 'tax principles', 'approach to tax' or 'tax code of conduct', a statement of compliance should enable users to readily identify the purpose of the document.

In addition, although this is the first Tax Strategy and readers may be able to deduce that the document relates to the current financial year, this will be more difficult going forwards (given that businesses are required to publish their Tax Strategy annually) if the financial year is not identified.

Beyond 'Tax Strategy' compliance

This report analyses how FTSE 50 companies have responded to Schedule 19 of Finance Act 2016, and its Tax Strategy disclosure requirements. However, as well as rating basic legislative compliance, we have assessed the degree to which FTSE 50 companies also provide clarity on their approach to (and use of) tax havens, the provision of public country-by-country reporting of economic activity and the listing of subsidiaries with their location. These additional areas of disclosure are not only integral to the Fair Tax Mark certification system, but are crucially important to stakeholders (everyone from investors through to civil society) who wish to form a full and informed view on the degree to which a business is a responsible payer of corporation tax. Progressive businesses recognise that paying taxes is an important part of how they contribute to the societies in which they operate, and wish to communicate this coherently.

- **Country-by-country reporting**
  Country-by-country reporting (CBCR) was first proposed by Richard Murphy, who is a director of the Fair Tax Mark. The idea has now been taken up (at least in part) by a multitude of multinational and national bodies. Most significantly it forms a central plank of the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting Action Plan. As a result, multinational corporations in most countries in the world are now preparing country-by-country reporting data for supply to their tax authorities, but not to publish on public record. The European Commission has now proposed that country-by-country reporting data be published publicly but whether this will actually happen is uncertain as yet.

  The UK was the first country to commit publicly to adopting the OECD template for CBCR; however, to date, it has shied away from requiring that such data should be publicly reported, despite an amendment to the Finance Bill being agreed by Parliament in September 2016, which gives the Treasury the option (yet to be enacted) to require public CBCR as part of a group's published Tax Strategy.

  Currently, UK headed multinational enterprises (MNEs), or UK sub groups of MNEs, make a confidential annual country-by-country report to HMRC (for accounting periods commencing on or after 1st January 2016), which is only shared with other relevant tax jurisdictions.

  The FTSE 50 companies within our study are all expected to file country-by-country reports with HMRC and these should show, for each tax jurisdiction in which the enterprise does business:
  - revenue, profit before income tax, income tax paid and accrued, and
  - total employment, capital, retained earnings and tangible assets.

Companies who have voluntarily embraced public country-by-country reporting have been recognised as examples of excellence in our study. These are Legal & General Group Plc, Prudential Plc, SSE Plc (which is a Fair Tax Mark certified company) and Vodafone Group Plc.

- **Approach to Tax Havens**
  Increasingly, companies are beginning to discuss their approach to (and use of) tax havens and this is demonstrated by the companies in our study, although in many instances explanations are evasive.

  Sometimes direct reference is made; for example, one discloses how many companies in the group are located in tax havens, where they are located and the nature of business activities of those companies. Sometimes reference is indirect; for example, by stating that the business does not engage in artificial transactions without economic substance (as part of meeting the legislative requirement to disclose their attitude towards tax planning). There is considerable room for improvement.

- **Disclosure of subsidiaries**
  Since 1st July 2015, the Companies Act 2006 requires businesses to include a full list of subsidiaries within the financial statements. For periods commencing on or after 1st January 2016, the address of the registered office of each subsidiary must also be disclosed (rather than simply the country of incorporation). This helps users assess where tax risk may be. All the companies that had published tax strategies within our study had also published a full list of subsidiaries in their latest financial statements.

- **Tax Strategy applicable to global taxes**
  Schedule 19 of Finance Act 2016 makes it mandatory for businesses to disclose their Tax Strategy so far as it relates to UK taxation. Companies who voluntarily disclose their Tax Strategy in respect of all other tax jurisdictions in which they operate were awarded the top score of 5 representing (provided they met all other prerequisites for scores 1 to 4). Four companies were awarded a score of 5. The preferred method of achieving this is to publish a 'global' Tax Strategy.

Overview of FTSE 50 response to date

Score of 0: No Tax Strategy
Two-thirds (66%, or 33) of companies had not published their Tax Strategy by the cut-off date for our study and therefore achieved a score of zero. Fair Tax Mark contacted these companies and those who did respond said that they expected to publish their Tax Strategy at a later date, and within the deadline applicable to them (i.e. before the end of their first financial year commencing after 15th September 2016). In many cases, business cited the fact that they had not yet produced that year's Financial Statements as a reason for a lack of progress. However, this was not a material factor for those businesses who produced a compliant Tax Strategy in advance of production of their 2016/17 Report and Accounts.

Score of 1: Poor Compliance
Seven (14%) of companies achieved a score of one. The reasons for this varied:

- some companies attempted to address each requirement, albeit so briefly that readers would not be able to understand the organisations approach to taxation; whilst
- other companies simply did not specify the level of risk that the business finds acceptable in relation to taxation. Addressing this requirement would allow them to achieve a higher score.

Score of 2: Basic Compliance
Four (8%) of companies achieved a score of two as they fully met the basic legislative requirements. All of these companies had started to make disclosures under HMRC guidance; however, as they did not cover many of the requirements covered by that guidance a higher score could not be awarded.

Score of 3: Good Compliance
Two (4%) of companies achieved a score of three. This means they had used most or all of HMRC guidance to help them meet the requirements of Finance Act 2016: as well as disclosing the mandatory list of subsidiaries within the financial statements, both companies disclosed their approach to and use of tax havens. However, country-by-country analysis of financial data was absent.

Score of 4: Beyond Compliance in the UK
None of the 17 published Tax Strategies achieved a score of four. This is because all companies who would have achieved this score also published a global Tax Strategy, meaning that they were awarded the top score of five.

Score of 5: Beyond Compliance Globally
Four (8%) of companies achieved the top score of five. They were Legal & General Group Plc, Prudential Plc, SSE Plc and Vodafone Group Plc.

Not only do these companies publish a comprehensive tax policy, they are also leaders in terms of voluntary tax transparency. These companies have embraced the introduction of Schedule 19 of Finance Act 2016 and used their own initiative to publish a Tax Strategy which not only applies to UK taxes (as required under the legislation) but also applies to tax affairs globally.

BEST PRACTICE CHECKLIST

Our recommendations on the characteristics of a good quality Tax Strategy disclosure are based on HMRC guidance, Fair Tax Mark's own principles and leading examples published online.

Approach to risk management and governance arrangements

Publish details of:

- tax risks linked to the business, its size, complexity and changes in the period;
- how business tax risks are managed;
- key roles and responsibilities;
- the systems and controls in place to manage tax risks;
- the levels of oversight of the Board and its involvement in managing tax risk;
- the major tax risk issues faced in the year and how they were resolved.

Attitude towards tax planning

Explain:

- tax planning motives;
- why external advice may be sought;
- any business code of conduct and how it is related to all aspects of the Tax Strategy;
- the group's approach to and use of tax havens, including a specific statement confirming that the company will not use tax havens to undertake transactions with the main aim of reducing tax liabilities;
- the group's commitment to paying the right amount of tax (but no more) in the right place, at the right rate and at the right time, in accordance with the spirit as well as the letter of the law;
- how, if company is involved in the provision of tax advice, the business' Tax Strategy is applied to the supply of client services (e.g. make a commitment not to sell tax avoidance).

Level of risk in relation to taxation that the business is prepared to accept

State if the organisation's internal governance has rigid levels of acceptable tax risk. If so, explain how this is influenced by stakeholders.

Approach towards dealing with HMRC (and other applicable tax authorities)

Explain:

- how the business meets the requirement to work constructively with HMRC;
- how the business works with HMRC on current, future and past tax risks;
- how the business works with HMRC on tax events;
- how the business works with HMRC on interpreting the law.

General

Provide:

- a statement of compliance in accordance with paragraphs 17(4) or 23(4) (as applicable) of Schedule 19 of Finance Act 2016, which require the company to make clear (in a way that will be readily apparent to anyone accessing the information online) that it regards its publication as complying with the duty under paragraph 16(2) or 22(2) (as applicable) in the current financial year;
- clarity on which financial year the Tax Strategy relates to, or disclose publication date;
- a statement that the Tax Strategy will be updated annually;
- a statement that the Tax Strategy applies to all tax jurisdictions and tax authorities in which the business operates (and not just in the UK and with regard to HMRC). This can be addressed by either one global Tax Strategy or separate Tax Strategies covering different jurisdictions;
- a full list of subsidiaries;*
- a country-by-country financial report.*

**Does not necessarily need to be published within the Tax Strategy document, but needs to be publicly available.*

EXAMPLES OF BEST PRACTICE

Risk management and governance (SSE Plc)

"SSE has a Group Risk Management and Internal Control Policy which is set by the Board. The policy consists of a clear set of principles and sets out roles and responsibilities which guide the risk management culture within SSE. That policy, and the associated principles and culture, are embedded in the approach SSE takes in relation to managing risk in relation to the Group's tax affairs.

The Board performs a review of the effectiveness of the system of internal control annually. This review is supported by a report from the Director of Group Risk, Audit and Insurance detailing the activity and operation of the system during the year. Internal Audit and Assurance reviews are undertaken are undertaken are undertaken across the business, including in the Director of Group Risk, Audit and Insurance report.

Gregor Alexander, SSE's Finance Director and Senior Accounting Officer, has ultimate responsibility for tax within SSE and for ensuring compliance with Group Tax Policy. Gregor Alexander has previously held the position of Tax Manager within SSE. SSE's Head of Tax, supported by a team of in-house specialists, has responsibility for managing all tax matters for the group and fulfilling compliance requirements.

A Tax and Treasury Steering Committee meets on a monthly basis to discuss key tax issues in order to manage tax risk. The tax implications of significant business transactions are evaluated, and areas where tax-related decisions are required to be taken are considered.

A tax manual is maintained which outlines the Tax Department roles and structure, and the tax control environment and procedures.

Regular risk reviews are undertaken to identify key tax risks and recommendations are made to allow improvements in processes and controls to be made. A tax risk register is maintained which documents key risks, details the potential impact on the business and identifies existing/proposed controls which can extinguish or minimise the tax risks. From that, a workplan is prepared annually, timetabling the compliance review activity to be undertaken.

In particular, tax specialists in SSE are expected to:

- *Apply diligent professional care and judgement when considering tax risks in line with the Group Risk Management and Internal Control Policy, and thoroughly assess tax risks in a consistent way.*
- *Ensure identified tax risks are supported with strong technical positions which are well documented and clearly explain the conclusion and position reached.*
- *Seek, where appropriate, advisory and technical support from external tax accounting and legal advisors to resolve uncertainty or obtain assurance that a conclusion is reasonable.*
- *Maintain constructive relationships with stakeholders and ensure that tax decisions do not negatively impact on SSE's relationship with its customers, investors, regulators or other key stakeholders; and*
- *Ensure that non-specialist colleagues, who process transactions, etc, have adequate training and guidance on tax matters relevant to their role."*

Source: http://content.yudu.com/web/14los/0A41bmu/SSETalkingTax/html/index.html?page=18

This is a strong disclosure on the approach of the business to risk management and governance arrangements in relation to taxation. Note that the disclosure does include elements of other requirements (e.g. the use of external advisors and the influence of stakeholders).

Level of tax risk that the business is prepared to accept (Imperial Brands Plc)

"Internal governance is not prescriptive on the levels of acceptable risk but, in practice, where there is material doubt as to the tax treatment of any particular transaction, the Group would only proceed on the advice from one or more leading tax practitioners that the transaction in question should have the particular outcome. External stakeholders have not sought to influence the level of acceptable risk."

Source: http://www.imperialbrandsplc.com/content/dam/imperial-brands/corporate/about-us/governance/UK%20Tax%20Strategy.pdf

Imperial Brands was one of the few FTSE 50 companies to directly address tax risk, and is open as to the fact that they do not operate rigid levels of acceptable risk and there has been no engagement with external stakeholders on the matter.

Attitude towards tax planning (Centrica Plc)

"Our tax teams seek to deliver clear, timely and relevant business advice around tax. The business understands that tax needs to be involved at an early stage in order to deliver the most value from the tax advice provided. We manage the tax risks and costs inherent in every commercial transaction, in the same way as any other cost. Therefore, tax will follow the commercial outcomes, taking into account of the need for tax efficiency and our understanding of the currently applicable laws and practice.

Where there is uncertainty surrounding the interpretation of tax law, we will seek second opinions from external advisers, having established our own understanding of the position, and/or seek to resolve the uncertainty by dialogue with tax authorities.

We do not enter into artificial arrangements in order to avoid taxation or to defeat the stated purpose of the legislation. As a general principle, we ensure that we have people and resources in every country where we do business commensurate with the activities carried on there. Throughout the Group tax is paid in the country in which the value arising from our presence is earned.

Accordingly, we do not utilise companies incorporated in "tax havens" which we define as jurisdictions which do not levy any corporate income tax on companies or low tax jurisdictions - as a means of reducing the Group's tax liabilities.

As at 31 December 2016, we have six companies which are incorporated in low tax jurisdictions. Of these, three are dormant, two are UK resident for tax purposes and therefore are subject to full UK tax and one is our captive insurance company. Whilst the captive is not UK resident for tax purposes the Group pays UK tax on its profits."

Source: https://www.centrica.com/sites/default/files/responsibility/group_tax_strategy_21032017.pdf

This is a strong disclosure on the attitude of the Group towards tax planning. The disclosure could be made even stronger by detailing any business code of conduct and inclusion of a more specific commitment to paying the right amount of tax (but no more) in the right place, at the right rate and at the right time in accordance with the spirit as well as the letter of the law.

Approach towards dealing with HMRC (Prudential Plc)

"Our tax affairs are complex, reflecting a combination of specific or additional corporation tax rules for life assurance companies, the range of taxes that apply to our businesses and the cross-border dimensions that come from being an international group. When dealing with tax authorities we do so in an open and constructive manner that aims to bring maters to a timely conclusion. In the UK, we are committed to discussing all significant matters with HMRC.

The complexity of the tax laws and regulations that relate to our businesses mean that from time to time we may disagree with tax authorities on the technical interpretation of a particular area of tax law. Generally, this is due to:

- *Ambiguity in the law and its intent;*
- *Changes that occur over time in tax authority interpretation;*
- *Case law developments; and*
- *Tax law not keeping pace with product or wider commercial/regulatory developments.*

Most of the time, these disagreements can be resolved through discussion. Sometimes, however, it is necessary for the matter to proceed to litigation to clarify the interpretation of the law.

We believe that more informed and sustainable outcomes are achieved where governments openly consult with industry and other affected stakeholders. We work with governments, both directly and through industry trade bodies, to explain the wider impact that tax proposals will have on the industry, the regulatory environment and our customers. We seek to provide pragmatic, proportionate and constructive comments to help meet the objectives of new initiatives in the interests of all our stakeholders. We have engaged with US, UK and other tax authorities on the scope and implementation of the US FATCA (Foreign Account Tax Compliance Act) and the OECD's Common Reporting Standard. Both of these regimes are intended to assist tax authorities in combating tax evasion.

Similarly, we have engaged with OECD and UK officials on various aspects of the scope and implementation of the work to reform and modernise the international tax regime stemming from the OECD Base Erosion and Profit Shifting (BEPS) project."

Source: http://www.prudential.co.uk/~/media/Files/P/Prudential-V2/reports/2016/prudential-tax-strategy-2016.pdf

This is a detailed disclosure on the business' approach towards dealing with HMRC. Note that the disclosure does include elements of other requirements (e.g. analysis of tax risks linked to the business, its size and complexity). The disclosure could be made even stronger by including specific examples of how the business works with HMRC on current, future and past tax risks.

CONCLUSION

Tax matters. It helps to fund vital public goods and services and when paid fairly it ensures a level playing field for businesses, whether large or small. That's why at the Fair Tax Mark we want a future where all businesses are proud to pay their fair share of tax. But in a world where trust is at a premium (especially when it comes to big business paying an appropriate amount of tax) companies need to report on their tax practices openly and honestly so that a variety of stakeholders can better understand the contribution they are making (or not making) to society, and why.

As at 30th June 2017, only 17 (34%) of FTSE 50 companies had published a Tax Strategy online that was mindful of the provisions of the Finance Act 2016. Of these 17, only six met or exceeded the legislative requirements. **Progress is proving slow to emerge; and when it does, many attempts are poorly executed.**

To date, a large majority of FTSE 50 companies are not following HMRC's guidance in a rigorous manner. For example: the requirement to disclose the level of tax risk that the business is prepared to accept was frequently absent from Tax Strategies, as was clarity on tax planning motives. Nearly every business failed to comment on how they work with HMRC on interpreting the law. A lot more needs to be done by companies (including those who are yet to publish their tax strategy) to ensure that disclosures are available that are compliant, useful to the reader and meet the objectives of tax transparency.

To be welcomed is the fact that a small group of more enlightened companies are not only implementing the legislation promptly, but voluntarily supplying much needed additional disclosures. The four stand-out examples of excellence are Legal & General Group Plc, Prudential Plc, SSE Plc and Vodafone Group Plc. Not only do these companies publish a comprehensive tax policy, they are also leaders in terms of voluntary tax transparency. These companies have embraced the introduction of Schedule 19 of Finance Act 2016 and used their own initiative to publish a Tax Strategy which not only applies to UK taxes (as required under the legislation) but also applies to tax affairs globally.

Poll after poll shows that tax avoidance is the number one concern of the UK public when it comes to corporate conduct. Reputations are being made and broken on this issue. This creates enormous risks, but opportunities also.

At the Fair Tax Mark, we seek to encourage and recognise organisations that pay the right amount of corporation tax at the right time and in the right place. Our increasing number of certified businesses include FTSE-listed plcs, co-operatives, social enterprises and large private business. The drive for greater tax transparency is not only inexorable, but good and necessary. It will be the businesses that recognise this that will benefit most in the future.

Fair Tax

Website: https://fairtaxmark.net
Phone: 0161 769 0427
Email: info@fairtaxmark.net
Twitter: @fairtaxmark

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